UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

ACADEMY OF MOTION PICTURES ARTS AND SCIENCES, a California non-profit corporation, Plaintiff, v. <ampas.com>, an Internet domain name, Defendant.	)	Civil Action No. 1:07-cv-356-LMB-LO

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION FOR A DEFAULT JUDGMENT TRANSFERRING <AMPAS.COM> TO PLAINTIFF

I. INTRODUCTION

The Plaintiff, ACADEMY OF MOTION PICTURES ARTS AND SCIENCES ("A.M.P.A.S."), hereby moves this Court under Federal Rule of Civil Procedure 55(b)(2) for a default judgment transferring to it control of the domain name <ampas.com>, which has used the famous A.M.P.A.S.® mark without A.M.P.A.S.'s authorization to operate a website that, like A.M.P.A.S.'s own website, provides information regarding the Academy Awards. By falsely affiliating with A.M.P.A.S., the <ampas.com> website has exploited the goodwill and trust associated with the A.M.P.A.S.® mark to provide links to commercial advertisements, news, and other information related to A.M.P.A.S. and the motion picture industry as well as other news, information and services in China and throughout the world. The injury caused by this unauthorized use of the A.M.P.A.S.® mark to the goodwill associated with it and to A.M.P.A.S.'s preeminent reputation in the entertainment industry is immeasurable.

By its default, <ampas.com> has conceded the truth of the allegations of A.M.P.A.S.'s Complaint (the "Complaint" or "Cmplt.") regarding the domain name registrant's acts of

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intentional cybersquatting, trademark infringement, trademark dilution, and unfair competition. There is no question that the <ampas.com> domain name is confusingly similar to the famous A.M.P.A.S.® mark, and that it was registered and is used with a bad faith intent to profit from the mark. It is also clear that the <ampas.com> domain name and website infringe the A.M.P.A.S.® mark, constitute unfair competition, and dilute or are likely to dilute the distinctive quality of the mark. Thus, under the Anti-Cybersquatting Consumer Protection Act (the "ACPA"), A.M.P.A.S. is entitled to an order transferring the <ampas.com> domain name to it.

II. FACTUAL BACKGROUND

A. A.M.P.A.S. and Its Trademark Rights.

A.M.P.A.S. was founded in 1927 by a now-legendary group of thirty-six film industry leaders, who numbered among them Cecil B. DeMille, Mary Pickford, Jack Warner and Douglas Fairbanks, for the purposes, *inter alia*, of advancing motion picture arts and sciences and promoting cultural, educational and technological progress by fostering cooperation among the motion picture industries creative leadership. As a constant incentive for members of the industry to strive to achieve those purposes, and as a means of recognizing persons who make outstanding contributions in their respective creative fields, A.M.P.A.S. holds its annual ACADEMY AWARDS® ceremony where it confers an "Award of Merit," known to the public as an "Oscar," in over twenty (20) categories of achievement. (Cmplt. ¶ 8; Declaration of Scott Miller in Support of Plaintiff's Motion for a Default Judgment ("Miller Decl.") ¶ 2.)

When the first Academy Awards were handed out on May 16, 1929, movies had just begun to talk. A.M.P.A.S. instituted its famous sealed-envelope system in 1941 and first televised its ceremony on March 19, 1953. Since then, the ACADEMY AWARDS® ceremony has grown into a nationally and internationally televised event. Each year, A.M.P.A.S.'s ceremony is seen in a live or delayed broadcast in over two hundred countries and territories, including the People's Republic of China, where it was first televised in 1990. An award category for foreign films has been included since 1948 and motion pictures from China have been nominated for this and other categories. (Cmplt. ¶ 8; Miller Decl. ¶ 3.)

The A.M.P.A.S.®, ACADEMY AWARD®, and ACADEMY AWARDS® marks have come to symbolize the most outstanding achievements in motion picture-making. As a result of the long and continuous use of its A.M.P.A.S.®, ACADEMY AWARD®, and ACADEMY AWARDS® marks in conjunction with its products and services, A.M.P.A.S. has gained valuable goodwill and a strong customer recognition in these trademarks throughout the world. To protect these valuable rights, A.M.P.A.S. has obtained a federal trademark registration for its A.M.P.A.S.®, ACADEMY AWARD®, and ACADEMY AWARDS® marks. (Cmplt. ¶ 9; Miller Decl. ¶ 4.)

As reflected below, A.M.P.A.S. registered with the United States Patent and Trademark Office its A.M.P.A.S.® trademark pursuant to Certificate of Registration No. 2166918 (registration date June 23, 1998); its ACADEMY AWARD® trademark pursuant to Certificate of Registration No. 2245965 (registration date May 18, 1999); and its ACADEMY AWARDS® trademark pursuant to Certificate of Registration Nos. 1103859 (registration date October 10, 1978), 1880473 (registration date February 28, 1995), 1956313 (registration date February 13, 1996):

Country of Registration	Mark	Reg. # / Date	Class	Goods/Services
United States	A.M.P.A.S.	2166918/ 6/23/1998	I 41	Educational and entertainment services rendered through the medium of an annual live television program in the field of motion pictures and award ceremonies.
United States	A.M.P.A.S.	2166918/ 6/23/1998	I 16	Series of nonfiction books, pamphlets and informational brochures issued from time to time

				relating to motion pictures and awards ceremonies.
United States	A.M.P.A.S.	2166918/ 6/23/1998	I 09	Pre-recorded video tapes and CD-ROMs featuring entertainment relating to motion pictures and award ceremonies
United States	ACADEMY AWARD	2245965 5/18/1999	I 41	Entertainment services, namely, an annual award program for presentation of awards in recognition of distinguished achievement in the motion picture industry; educational services, namely, providing incentives to persons to demonstrate excellence in the field of motion pictures through the issuance of awards.
United States	ACADEMY AWARDS	1103859 10/10/1978	I 16	Books, pamphlets, brochures and press kits issued from time to time.
United States	ACADEMY AWARDS	1103859 10/10/1978	I 41	Educational and entertainment services rendered through the medium of an annual live, television program dealing with motion pictures.
United States	ACADEMY AWARDS	1880473 2/28/95	I 09	Pre-recorded video tapes featuring entertainment relating to motion pictures.
United States	ACADEMY AWARDS	1956313 2/13/1996	I 25	Sweatshirts; jackets; T-shirts; and, caps.

These marks are valid and subsisting and, as the owner of the registered marks, A.M.P.A.S. has the rights to their exclusive use. (Cmplt. ¶ 10, Exh. D; Miller Decl. ¶ 5, Exh. A.)

As a result of A.M.P.A.S.'s long involvement in the motion picture industry, extensive advertising, and media and public interest in A.M.P.A.S.'s ceremony, its A.M.P.A.S.® trademark has become famous and is associated in the public's mind with A.M.P.A.S. A.M.P.A.S. has made substantial investments in developing its reputation, which is symbolized by its valuable trademark A.M.P.A.S.®. (Cmplt. ¶ 11; Miller Decl. ¶ 6.)

With respect to Registration No. 2166918 for the A.M.P.A.S.® mark, A.M.P.A.S. has complied with the requirements set forth in Sections 8 and 15 of the Lanham Act. A.M.P.A.S.'s exclusive right to use the mark and its registration thereof has become incontestable within the meaning of 15 U.S.C. § 1065 and said certificate of registration constitutes conclusive evidence of, inter alia, A.M.P.A.S.'s ownership of and exclusive right to use the mark. (Cmplt. ¶ 12; Miller Decl. ¶ 7.)

In addition to the aforementioned trademark registrations, A.M.P.A.S. owns the Internet domain name <ampas.org>, which incorporates its A.M.P.A.S.® mark. Through its website at <ampas.org>, other Internet channels, and other media, A.M.P.A.S. actively advertises, promotes and uses the A.M.P.A.S.® mark to identify itself, its sponsored activities and products, its communications and related services. As a result of A.M.P.A.S.'s extensive advertisement, media attention, and long leadership of the motion picture and related industries, the A.M.P.A.S.® mark has achieved widespread and favorable acceptance and recognition, and has become an asset of substantial value throughout the United States and the world. Such goodwill would not be a valuable, prized asset if A.M.P.A.S. lost control over the ability to prevent unauthorized use of the A.M.P.A.S.® mark. (Cmplt. ¶ 13; Miller Decl. ¶ 8.)

B. Unlawful Use of the Domain Name <AMPAS.COM>.

The registrant, owner, and operator of the <ampas.com> domain name has exploited the substantial public trust and recognition associated with the A.M.P.A.S.® mark. (Cmplt. ¶¶ 16-20; Declaration of Brian Kang in Support of Plaintiff's Motion for a Default Judgment Transferring <AMPAS.COM> to Plaintiff> ("Kang Decl.") ¶ 3.) When registering the domain name on March 24, 2002, the registrant was clearly aware of the famous A.M.P.A.S.® mark and the vast and valuable goodwill that the mark symbolizes. (Cmplt. ¶¶ 14, 16; Kang Decl. ¶ 3, Exh. D.) The registrant obviously registered <ampas.com> because it is nearly identical to the

A.M.P.A.S.® mark and then used the domain name to facilitate consumers' mistaken association between the <ampas.com> website and A.M.P.A.S. (Cmplt. ¶¶ 17-19; Kang Decl. ¶ 3.)

The website <www.ampas.com> is designed to mislead consumers regarding its association with A.M.P.A.S. (Cmplt. ¶¶ 17-19; Kang Decl. ¶ 1, Exh. A-C.) <ampas.com> operates that website to provide, like A.M.P.A.S., information regarding the Academy Awards and the motion picture industry. (Cmplt. ¶ 14-15; Kang Decl. ¶ 2, Exh. A-C.) When Internet users visit the Web site located at <ampas.com>, they see a screen containing a search engine with links to several categories. Displayed across the top of the screen is the heading "<ampas.com>." Among the categories prominently displayed and designated as either "popular categories" or "popular links" are "2007 academy awards," "academy award winners," "academy award nominees," "oscar statuette images," "korean girls," "sex," "gay sex," "porno," "oscar," and "films." Although the layout of the webpage and the specific links vary from time to time, the search engine and the presence of references to A.M.P.A.S.®, ACADEMY AWARDS®, OSCAR® and either "girls" or "sex" is consistent between different versions of the page. (Cmplt. ¶ 15, Exh. F-H; Kang Decl. ¶ 2, Exh. A-C.)

No person associated with A.M.P.A.S. has ever authorized <ampas.com> or any person associated with the <ampas.com> domain name or website, to display, use, distribute, or copy any of A.M.P.A.S.'s trademarks for any purpose whatsoever. (Cmplt. ¶ 19; Kang Decl. ¶ 4.) Rather, the registrant of <ampas.com> intentionally and willfully registered the domain name and created the website at that domain name in bad faith with full knowledge of A.M.P.A.S.'s ownership of and exclusive rights to use the A.M.P.A.S.® mark, with the intent to deceive and mislead the public into believing that the <ampas.com> website and its links to commercial advertisements, news and information were sponsored by or associated with A.M.P.A.S. (Cmplt. ¶¶ 16-20; Kang Decl. ¶ 4.) The registrant in fact depended on consumers' widespread recognition of the A.M.P.A.S.® mark to attract more Internet users to <ampas.com> based on a false association with A.M.P.A.S., and to divert to its website consumers looking for websites belonging to or affiliated with A.M.P.A.S. (Cmplt. ¶ 18; Kang Decl. ¶ 4.)

This use of the <ampas.com> domain name is likely to cause consumer confusion or deceive consumers into thinking that the <ampas.com> website and its services are affiliated with A.M.P.A.S. <ampas.com> and the registrant of <ampas.com> have intentionally and in bad faith created this misimpression. (Cmplt. ¶ 20; Kang Decl. ¶ 5.) These unlawful activities have diluted the distinctive qualities of the A.M.P.A.S.® mark in identifying A.M.P.A.S.'s goods or services and have caused A.M.P.A.S. great and irreparable harm. (Cmplt. ¶¶ 21-22, 27, 32, 35-36, 41; Kang Decl. ¶ 5.)

C. Default Proceedings.

Before instituting any legal proceedings, A.M.P.A.S. notified the registrant of <ampas.com> that use of the domain name infringed A.M.P.A.S.'s famous A.M.P.A.S.® mark and requested, among other things, that the registrant transfer the domain name registration for <ampas.com> to A.M.P.A.S. A.M.P.A.S. also notified the registrant that if it failed to comply with these requests, A.M.P.A.S. would consider pursuing its legal remedies under the Anticybersquatting Consumer Protection Act of 1999, 15 U.S.C. § 1125(d)(2)(A). (Cmplt. ¶ 6, Exh. A; Kang Decl. ¶ 7, Exh. E.)

A.M.P.A.S. initially submitted the dispute over the domain name <ampas.com> to the World Intellectual Property Organization ("WIPO") for arbitration pursuant to the Uniform Domain Resolution Policy agreed to by the registrant, Lin ZanSong, and the registrar of the domain name, which is a Chinese company. The arbitration panel ruled in favor of A.M.P.A.S. and ordered the domain name <ampas.com> be transferred to A.M.P.A.S. (Cmplt. ¶ 7, Exh. B-C; Kang Decl. ¶ 8, Exh. F-G.) However, the registrar refused to transfer the domain name to

A.M.P.A.S., and stated that Lin ZanSong initiated a proceeding in a Chinese court naming A.M.P.A.S. as a defendant and seeking to determine the ownership of the disputed domain name. This effectively stalled the transfer of the domain name to A.M.P.A.S. To date, A.M.P.A.S. has not been served with any complaint filed in any Chinese court concerning the disputed domain name. (Cmplt. ¶ 7; Kang Decl. ¶ 8.)

On April 13, 2007, A.M.P.A.S. filed the instant lawsuit to protect its valuable A.M.P.A.S.® mark. On June 22, 2007, A.M.P.A.S. published notice of the lawsuit in *The Washington Post* pursuant to the Court's June 18, 2007 Order to Publish Notice of Action Pursuant to 15 U.S.C. § 1125(d)(2)(A)(ii)(II)(bb). (July 2, 2007 Affidavit of Maureen E. Carr Pursuant to Order to Publish Notice of Action Pursuant to 15 U.S.C. § 1125(d)(2)(A)(ii)(II)(bb) ¶ 3, Exh. A.)

The defendant domain name has failed to appear, plead, or otherwise respond to the Complaint or defend itself in this matter. (July 23, 2007 Affidavit of Maureen E. Carr ¶ 4.) Under the Court's June 18, 2007 Order to Publish Notice of Action Pursuant to 15 U.S.C. § 1125(d)(2)(A)(ii)(II)(bb) and the Federal Rules of Civil Procedure, the defendant's time to respond to the Complaint expired on July 12, 2007. A.M.P.A.S. subsequently requested that the Clerk of this Court enter a default against the defendant domain name. On July 25, 2007, the Clerk of the Court entered a default against the defendant for failure to plead or otherwise defend the claims in the Complaint. A.M.P.A.S. now moves the Court for entry of a default judgment transferring the domain name <ampas.com> to it.

III. ARGUMENT

Default judgment is appropriate because A.M.P.A.S. has alleged, and through its default <ampas.com> has conceded, acts of intentional cybersquatting, trademark infringement, trademark dilution, and unfair competition. The default concedes the truth of the allegations of

A.M.P.A.S.'s Complaint regarding the liability of <ampas.com>. *See, e.g.*, *Ryan v. Homecomings Financial Network*, 253 F.3d 778, 780 (4th Cir. 2001) ("The defendant, by his default, admits the plaintiff's well-pleaded allegations of fact, is concluded on those facts by the judgment, and is barred from contesting on appeal the facts thus established"); *Jack in the Box, Inc. v. Jackinthebox.org*, 143 F. Supp. 2d 590, 592 (E.D. Va. 2001) ("Since this civil action is in default, the facts as stated in the Complaint are deemed admitted and true"); *GlobalSantafe Corp. v. Globalsantafe.com*, 250 F. Supp. 2d 610, 612 (E.D. Va. 2003) (holding that "[u]pon default, facts alleged in the Complaint are deemed admitted").

Further, entry of a default judgment against <ampas.com> is proper because denial of relief would unfairly prejudice A.M.P.A.S. A default judgment is warranted when the "adversary process has been halted because of an essentially unresponsive party." *SEC v. Lawbaugh*, 359 F. Supp. 2d 418, 421 (D. Md. 2005).

A. <AMPAS.COM> Is Liable for Federal Cybersquatting.

Congress passed the ACPA to address the precise situation presented by this case. Congress sought to "protect consumers and businesses by 'prohibiting the bad-faith and abusive registration of distinctive marks as Internet domain names with the intent to profit from the goodwill associated with such marks – a practice commonly referred to as 'cybersquatting.'" *Harrods Ltd. v. Sixty Internet Domain Names*, 302 F.3d 214, 231 (4th Cir. 2002) (quoting the Senate Judiciary Committee Report on the APCA, Sen. Rep. No. 106-140, at 4 (1999)).

The APCA provides for liability against persons and against the domain name itself when the domain name registrant is not subject to personal jurisdiction. *See* 15 U.S.C. § 1125(d)(2)(A)(ii); *see also Porsche Cars N. Am., Inc. v. Porsche.net*, 302 F.3d 248, 254 (4th Cir. 2002) ("The anticybersquatting statute authorizes *in rem* jurisdiction over a domain name if personal jurisdiction over the registrant of the domain name is unavailable"). Judgment against the domain name <ampas.com> is proper because the domain name registrant is not subject to personal jurisdiction. *See* 15 U.S.C. § 1125(d)(2)(A)(ii). The registrant is a resident of Wenzhou, Zhejiang, China with no known contacts with the United States. (Cmplt. ¶¶ 3, 6; Kang Decl. ¶¶ 3, 6, Exh. D.) Venue in this Court is proper because VeriSign Global Registry Services, the domain name registry of all ".com" domain names, is located in this judicial district. *See* Cmplt. ¶ 6; 15 U.S.C. § 1125(d)(2)(A).

To prevail on its cybersquatting claim under the ACPA, A.M.P.A.S., as the owner of a mark protected under trademark law, must prove that the registrant of <ampas.com> (1) has a bad faith intent to profit from the mark, and (2) registered, traffics in, or uses a domain name that is identical or confusingly similar to the mark, which was famous or distinctive when the domain name was registered. 15 U.S.C. § 1125(d)(1)(A). A.M.P.A.S. easily satisfies both prongs of this test for liability under the ACPA.

1. The A.M.P.A.S.® Mark Was Famous When <AMPAS.COM> Was Registered.

A.M.P.A.S. has alleged, and by its default <ampas.com> has conceded, that the A.M.P.A.S.® mark was famous when the domain name was registered. (Cmplt. ¶¶ 1, 11, 16, 21, 25, 34.) A.M.P.A.S. is widely recognized in the entertainment industry and throughout the world by virtue of the nationally and internationally televised ACADEMY AWARDS® ceremony. (Cmplt. ¶¶ 8, 9, 13; Miller Decl. ¶ 3.) As a result of A.M.P.A.S.'s extensive advertisement, media attention, and long leadership of the motion picture and related industries, the A.M.P.A.S.® mark has achieved widespread and favorable acceptance and recognition, and has become an asset of substantial value throughout the United States and the world. (Cmplt. ¶ 13; Miller Decl. ¶ 4, 8.) A.M.P.A.S.'s exclusive right to use the A.M.P.A.S.® mark is incontestable within the meaning of 15 U.S.C. § 1065. (Cmplt. ¶ 12, Exh. D; Miller Decl. ¶ 5, 7, Exh. A.)

There can be no doubt that the A.M.P.A.S.® mark is famous and was so when the <ampas.com> domain name was registered on March 24, 2002. *See* 15 U.S.C. § 1125(c)(1) (listing as factors relevant to a mark's fame: the duration and geographic extent of the mark's use and advertising; the degree of recognition of the mark in its trading areas and by the defendant; and registration of the mark); *see also* Miller Decl. ¶ 6; Kang Decl. ¶ 3, Exh. D (showing a March 24, 2002 registration date for the <ampas.com> domain name). In fact, the domain name registrant's decision to exploit the A.M.P.A.S.® mark to offer similar services merely underscores the fame of the A.M.P.A.S.® mark. Such copying makes sense only in the context of drawing on the vast goodwill and reputation of a famous mark. *Cf. Int'l Bancorp, LLC v. Societe des Bains de Mer et du Cercle des Estrangers a Monaco*, 329 F.3d 359, 371 (4th Cir. 2003) (holding that "a trademark plaintiff that proves that the defendant directly and intentionally copied its mark is presumed to have proved that mark's secondary meaning").

2. <AMPAS.COM> Is Identical or Confusingly Similar to the A.M.P.A.S.® Mark.

A.M.P.A.S. has alleged, and by its default <ampas.com> has conceded, that the domain name is likely to cause consumer confusion regarding whether <ampas.com> is authorized by or associated with A.M.P.A.S. (Cmplt. ¶¶ 1, 20, 25, 29, 38-40.) The registrant and operator of <ampas.com> willfully and in bad faith intended to mislead consumers regarding the website's purported sponsorship or endorsement by A.M.P.A.S. (*Id.* ¶¶ 20-21, 26, 30, 32.) The domain name incorporates wholesale the famous A.M.P.A.S.® word mark, and furthers the false association by displaying the heading <ampas.com> at the top of the website and prominently displaying headings such as "2007 academy awards," "academy award winners," "academy award nominees," and "oscar statuette images." (Cmplt. ¶ 15, Exh. F-H; Miller Decl. ¶ 2, Exh. A-C.)

Given this, there is no question that the <ampas.com> domain name and its website content are confusingly similar to the A.M.P.A.S.® mark. *See Int'l Bancorp*, 329 F.3d at 382 (concluding that "casinodemontecarlo" and "casinomontecarlo" domain names were confusingly similar to the famous "Casino de Monte Carlo" mark given the near identity of the names and the use of website content designed to foster the false association); *Venetian Casino Resort, LLC v. VenetianGold.com*, 380 F. Supp. 2d 737, 743 (E.D. Va. 2005) (holding that defendant domain names were confusingly similar to the plaintiff's marks when they bore "such a visual resemblance that internet users would reasonably assume that the names were modified, used, approved, and/or permitted by the plaintiff").

3. The Registration of <AMPAS.COM> Shows a Bad Faith Intent to Profit from the A.M.P.A.S.® Mark.

The ACPA sets forth specific factors for determining when a domain name registrant has bad faith intent to profit from a mark in registering or using the mark in a domain name. *See* 15 U.S.C. § 1125(d)(1)(B)(i); *Harrods Ltd. v. Sixty Internet Domain Names*, 302 F.3d 214, 234 (4th Cir. 2002). These factors overwhelmingly support a finding of bad faith in this case:

- The registrant of <ampas.com> clearly intended to divert customers from A.M.P.A.S.'s websites for purposes of commercial gain. *See* Cmplt. ¶ 18; 15 U.S.C. § 1125(d)(1)(B)(i)(V) (citing intent to divert as a factor relevant to bad faith). The registrant designed the <ampas.com> website to mislead the public regarding A.M.P.A.S.'s sponsorship, affiliation, or endorsement of the website. (Cmplt. ¶¶ 17-20; Kang Decl. ¶ 2, 4.) The registrant incorporated wholesale the famous A.M.P.A.S.® word mark in its domain name and then used the mark to provide links to commercial advertisements, news, and other information related to A.M.P.A.S. and the motion picture industry as well as other news, information and services in China and throughout the world. (Cmplt. ¶¶ 14, 17-18; Kang Decl. ¶¶ 2-3.) This false affiliation of the <ampas.com> website with A.M.P.A.S. and the A.M.P.A.S.® mark has caused immeasurable harm to the mark's goodwill built up over 80 years (Cmplt. ¶¶ 8-9, 21-22, 27, 32, 36, 41; Kang Decl. ¶¶ 2-5), and certainly demonstrates that the domain name registrant was not acting in good faith. *See* 15 U.S.C. § 1125(d)(1)(B)(i)(V).

- The widespread fame of the A.M.P.A.S.® mark and its wholesale incorporation in the <ampas.com> domain name also evince the domain name registrant's bad faith. *See* 15 U.S.C. § 1125(d)(1)(B)(i)(IX) (identifying as a bad-faith factor the extent to which the mark incorporated in the domain name is distinctive and famous); *Virtual Works, Inc. v. Volkswagen of Am., Inc.*, 238 F.3d 264, 269 (4th Cir. 2001) (holding that the famousness of the mark and the similarity of the domain name to the mark were circumstantial evidence of bad faith with respect to the mark).

- Finally, the domain name registrant has no authorization from A.M.P.A.S. to use the A.M.P.A.S.® mark and has no intellectual property rights in the <ampas.com> domain name or in the word "A.M.P.A.S." *See* Cmplt. ¶ 19; Kang Decl. ¶ 4; *see also* 15 U.S.C. § 1125(d)(1)(B)(i)(I) (registrant's intellectual property rights are a factor). There is no evidence that the registrant has ever made any prior lawful use of the domain name <ampas.com>, either bona fide noncommercial use, fair use, or prior use in connection with bona fide goods or services. *See* Kang Decl. ¶ 4; *see also* 15 U.S.C. § 1125((d)(1)(B)(i)(III), (IV) (prior lawful uses are factors).

Consideration of the relevant ACPA factors shows overwhelmingly that the <ampas.com> domain name was registered and is being used with a bad faith intent to profit from the famous A.M.P.A.S.® mark. *See* 15 U.S.C. § 1125(d)(1). A.M.P.A.S. therefore has established liability under the ACPA and is entitled to transfer of the domain name to it. *See* 15 U.S.C. at § 1125(d)(2)(D)(i).

B. <AMPAS.COM> Is Liable for Federal Trademark Infringement and Unfair Competition.

Because transfer of the domain name is warranted under A.M.P.A.S.'s cybersquatting claim, the Court need not consider A.M.P.A.S.'s additional claims of federal trademark infringement, unfair competition, and trademark dilution. *See Harrods*, 302 F.3d at 232 (holding that when transfer of a domain name is warranted under a bad-faith ACPA claim, the court need not consider trademark infringement and dilution claims warranting the same relief). Nonetheless, A.M.P.A.S. is also entitled to relief under its other claims. *See* 15 U.S.C. §§ 1125(d)(2)(A)(i) & 1125(d)(2)(D)(i) (providing the remedy of domain name transfer for any trademark violation).

To prevail on its federal trademark infringement and unfair competition claims, A.M.P.A.S. must establish that (1) it possesses a mark, (2) that <ampas.com> uses, (3) in commerce, (4) in connection with the sale, offering for sale, distribution, or advertising of goods or services, and (5) that the use of the mark is in a manner likely to confuse consumers. *See People for the Ethical Treatment of Animals v. Doughney*, 263 F.3d 359, 364 (4th Cir. 2001); *Graduate Mgmt. Admission Council v. Raju*, 267 F. Supp. 2d 505, 510 (E.D. Va. 2003). A.M.P.A.S. readily satisfies these elements.

1. A.M.P.A.S. Owns the A.M.P.A.S.® Mark, Which <AMPAS.COM> Unlawfully Uses in Commerce to Sell and Offer for Sale News, Information, Products and Services Related to the Academy Awards and the Motion Picture Industry.

A.M.P.A.S. owns the registered and incontestible A.M.P.A.S.® mark. (Cmplt. ¶ 10, Exh. D; Miller Decl. ¶ 5, Exh. A.) The mark's incontestible status "provide[s] conclusive evidence of [A.M.P.A.S.'s] right to use the mark in commerce." *Lone Star Steakhouse & Saloon, Inc. v. Alpha of Virginia, Inc.*, 43 F.3d 922, 935 (4th Cir. 1995).

Without A.M.P.A.S.' s permission, the A.M.P.A.S.® mark was incorporated wholesale in the <ampas.com> domain name and used throughout the website. (Cmplt. ¶¶ 18-19; Kang Decl. ¶¶ 2-5, Exh. A-C.) This use of the A.M.P.A.S.® mark, both as part of the domain name and on the website, was in commerce and in connection with the sale and offering for sale of news, information, products and services related to the Academy Awards and the motion picture industry. The <ampas.com> domain name directs Internet users to a website where that provides links to various commercial advertisements, news, and other information, and the A.M.P.A.S.® mark is used on that website to falsely represent that the services are sponsored, endorsed, or affiliated with A.M.P.A.S.. (Cmplt. ¶¶ 14, 20; Kang Decl. ¶¶ 2, Exh. A-C.)

2. Use of the A.M.P.A.S.® Mark by <AMPAS.COM> Is Likely to Confuse Consumers.

This use of the A.M.P.A.S.® mark by <ampas.com> is likely to confuse consumers regarding the source, sponsorship, or affiliation of its news-distribution services. (Cmplt. ¶¶ 1, 20, 25, 29, 38-40; Kang Decl. ¶ 5.) In evaluating likelihood of confusion, the factors to consider are: (1) the strength of the A.M.P.A.S.® mark, (2) the similarity between it and <ampas.com>, (3) the similarity between A.M.P.A.S.'s services and those provided at <ampas.com>, (4) the similarity between the facilities that A.M.P.A.S. uses in its business and those used in connection with the provision of services at <ampas.com>, (5) the similarity between A.M.P.A.S.'s advertising and advertising used to promote the services offered at <ampas.com>, (6) the intent underlying the use of <ampas.com>, and (7) the existence of any actual confusion. *Petro Stopping Ctrs., L.P. v. James River Petroleum, Inc.*, 130 F.3d 88, 91 (4th Cir. 1997). Not all factors are of equal weight or even relevant in every case. *Pizzeria Uno Corp. v. Temple*, 747 F.2d 1522, 1527 (4th Cir. 1984).

Application of these factors compels the conclusion that consumer confusion is likely to result from the incorporation of the A.M.P.A.S.® mark by <ampas.com> in its domain name and company name. The A.M.P.A.S.® mark is a strong mark because it is famous as the sponsor of the Academy Awards. *See* Cmplt. ¶¶ 1, 8-9, 11, 13, 16, 21, 25, 34; Miller Decl. ¶¶ 2-8; *Continental Airlines, Inc. v. ContinentalAirlines.com*, 390 F. Supp. 2d 501, 508 (E.D. Va. 2005) (holding that marks that are famous are strong marks); *Cable News Network L.P., L.L.L.P. v. CNNews.com*, 177 F. Supp. 2d 506, 515 (E.D. Va. 2001), *aff'd in part, vacated in part on other grounds by* 56 Fed. Appx. 599, 603 (4th Cir. 2003), (same).

The <ampas.com> domain name is substantially identical to the A.M.P.A.S.® mark, and the <ampas.com> website displays the <ampas.com> company name that incorporates the A.M.P.A.S.® mark. (Cmplt. ¶ 18; Kang Decl. ¶ 2, Exh. A-C.) Moreover, the information that <ampas.com> purports to provide regarding the Academy Awards is similar to the information that A.M.P.A.S. offers under the A.M.P.A.S.® mark and provides on its own website. (Cmplt. ¶¶ 11, 13, 17-18, Exh. F-H; Kang Decl. ¶ 2, A-C.) Thus, A.M.P.A.S. and <ampas.com> offer their respective services and advertise through the same means. *See Continental Airlines*, 390 F. Supp. 2d at 508.

Finally, there can be no doubt that <ampas.com> was registered to capitalize on consumer confusion. There is no other explanation for registering a domain name substantially identical to the famous A.M.P.A.S.® mark, and then using that domain name to forward Internet users to a website that purports to provide news and information regarding the Academy Awards. The only reasonable conclusion is that the registrant sought to exploit the goodwill and trust associated with the famous A.M.P.A.S.® mark to attract and divert Internet users to its website and promote its services.

The factors for consumer confusion and other elements of trademark infringement and unfair competition show clearly that <ampas.com> infringed A.M.P.A.S.'s rights in the A.M.P.A.S.® mark. Thus, under its claims of trademark infringement and unfair competition, A.M.P.A.S. is entitled to transfer of the domain name to it. *See* 15 U.S.C. § 1125(d)(2)(D)(i); *Harrods*, 302 F.3d at 232.

C. <AMPAS.COM> Is Liable for Federal Trademark Dilution.

Transfer of <ampas.com> is also warranted under A.M.P.A.S.'s claim of trademark dilution. *See* 15 U.S.C. §§ 1125(d)(2)(A)(i) & 1125(d)(2)(D)(i). For dilution, A.M.P.A.S. must establish that: (1) it owns a famous mark; (2) <ampas.com> makes commercial use of the mark in commerce; (3) the use began after the mark had become famous; and (4) the use dilutes, or is likely to dilute, the distinctive quality of the mark by reducing its capacity to identify goods or services. *See* 15 U.S.C. §§ 1125(c)(1) & 1127; *Carefirst of Md., Inc. v. First Care, P.C.*, 434 F.3d 263, 274 (4th Cir. 2006); *Louis Vuitton Malletier S.A. v. Haute Diggity Dog*, 464 F. Supp. 2d 495, 503-04 (E.D. Va. 2006).

As discussed already above, the A.M.P.A.S.® mark is famous as the sponsor of the Academy Awards, the mark's use by <ampas.com> is unquestionably commercial, and this use began long after the A.M.P.A.S.® mark had become famous. A.M.P.A.S. has used the A.M.P.A.S.® mark to symbolize the most outstanding achievements in motion picture-making for 70 years. (Cmplt. ¶¶ 8-9, 11, Exh. D; Miller Decl. ¶¶ 4-6.) By comparison, the <ampas.com> domain name was registered only on March 24, 2002, and its website has deceptively offered links to commercial advertisements, news, and other information using the A.M.P.A.S.® mark. (Cmplt. ¶¶ 14-20; Kang Decl. ¶¶ 2-3, Exh. A-C.)

This use of the A.M.P.A.S.® mark by <ampas.com> dilutes, or is likely to dilute, the distinctive quality of the mark. (Cmplt. ¶¶ 21, 35.) Dilution is established because the <ampas.com> domain name is nearly identical to the A.M.P.A.S.® mark, and the <ampas.com> website displays the <ampas.com> company name that incorporates the A.M.P.A.S.® mark. (Cmplt. ¶ 18; Kang Decl. ¶¶ 2-3, Exh. A-C.) Courts have held that such a high degree of similarity is per se evidence of actual dilution. *See Carefirst of Md.*, 434 F.3d at 274 (holding that evidence that marks are "nearly identical" or "very similar" is per se evidence of actual dilution); *Moseley v. Secret Catalogue, Inc.*, 537 U.S. 418, 434 (2003) ("[D]irect evidence of dilution . . . will not be necessary if actual dilution can reliably be proven through circumstantial evidence – the obvious case is one where the junior and senior marks are identical").

Indeed, dilution is reliably proven from registration of a domain name that is identical or similar to a company's name or mark. *See Panavision Int'l LP v. Toeppen*, 141 F.3d 1316, 1326-27 (9th Cir. 1998) (holding that use of a trademark in a domain name establishes dilution); *Aztar Corp. v. MGM Casino*, 59 U.S.P.Q.2d 1460, 1464 (E.D. Va. 2001) ("Where the defendant has used a plaintiff's trademark in a domain name, courts have found dilution as a matter of law."); *Virtual Works, Inc. v. Network Solutions, Inc.*, 106 F. Supp. 2d 845, 847 (E.D. Va. 2000), *aff'd* 238 F.3d 264 (4th Cir. 2001) (holding that "internet cyberpiracy constitutes per se trademark dilution"); *Pinehurst, Inc. v. Wick*, 256 F. Supp. 2d 424, 431-32 (M.D.N.C. 2003) (finding dilution based on the "identical or virtually identical character of [Defendants'] domain names to Plaintiffs' marks"). This is because "[a] significant purpose of a domain name is to identify the entity that owns the web site." *Panavision*, 141 F.3d at 1327. Registration by persons other than the mark holder is likely to prevent or hinder Internet users from accessing the mark holder's website, thus diminishing the economic value of the mark. *Pinehurst*, 256 F. Supp. 2d at 431; *Virtual Works*, 106 F. Supp. 2d at 847 (holding that the plaintiff "experienced economic harm as a result of not being able to use" the domain name of its mark).

Because the <ampas.com> domain name is nearly identical to A.M.P.A.S.'s name and the A.M.P.A.S.® mark, there can be no question that A.M.P.A.S. has established a likelihood of, if not actual, dilution. A.M.P.A.S. therefore prevails on its dilution claim and is entitled to transfer of <ampas.com> to it under that claim. *See* 15 U.S.C. § 1125(d)(2)(D)(i).

IV. CONCLUSION

For the foregoing reasons, A.M.P.A.S. respectfully requests that the Court grant its motion for a default judgment, transferring control of the domain name <ampas.com> to A.M.P.A.S. in accordance with the proposed judgment submitted concurrently with this motion.

DATED: August 15, 2007

REES BROOME, PC

By: _________/s/_______________

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Plaintiff's Memorandum of Law in Support of its Motion for a Default Judgment Transferring <AMPAS.COM> to Plaintiff was filed with the Clerk of the Court using the CM/ECF system, and that a copy was served via Federal Express and email on the registrant of the defendant domain name, which is a non-filing user, at the postal and email addresses set forth below:

Lin ZanSong
1688 RM RD.
Wenzhou, Zhejiang
China 325000
Email: master@21cn.net

this 15th day of August, 2007.

/s/

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